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Attorney for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

NICOLE GILLAND, an individual,

Plaintiff,

vs.

SOUTHWESTERN OREGON COMMUNITY COLLEGE DISTRICT BY AND THROUGH ITS BOARD OF EDUCATION, an Oregon community college District and Board; **SOUTHWESTERN OREGON COMMUNITY COLLEGE**, an Oregon community college;

Defendants.

Case No. 6:19-cv-00283-MK

PLAINTIFF'S OBJECTIONS TO DEFENDANTS' PROPOSED TRIAL EXHIBITS AND WITNESS STATEMENTS

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Plaintiff Nicole Gililand objects to Defendants' proposed trial exhibits as follows:

No	Description	Objection(s)
202	Emails from undergraduate courses	Relevance and prejudice (401, 403). These emails are from a different program years before the incidents in question. Impermissible character evidence (404). SWOCC wants to suggest that the emails reveal Plaintiff's character and hope the jury will draw an impermissible inference on that basis.
203	Emails from undergraduate courses	Relevance and prejudice (401, 403). These emails are from a different program years before the incidents in question. Impermissible character evidence (404). SWOCC wants to suggest that the emails reveal Plaintiff's character and hope the jury will draw an impermissible inference on that basis.
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209	Emails from undergraduate courses	Relevance and prejudice (401, 403). These emails are from a different program years before the incidents in question. Impermissible character evidence (404). SWOCC wants to suggest that the emails reveal Plaintiff's character and hope the jury will draw an impermissible inference on that basis. Hearsay (801). The emails from undergraduate professors are hearsay and do not fall within any exception.
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212	Incomplete portions of Nursing Student Handbook	Incomplete and misleading without full context. (1001, 1002)
213	Emails from undergraduate courses	Relevance and prejudice (401, 403). These emails are from a different program years before the incidents in question. Impermissible character evidence (404). SWOCC wants to suggest that the emails reveal Plaintiff's character and hope the jury will draw an impermissible inference on that basis. Hearsay (801). The emails from undergraduate professors are hearsay and do not fall within any exception.
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215	Emails from undergraduate courses	Relevance and prejudice (401, 403). These emails are from a different program years before the incidents in question. Impermissible character evidence (404). SWOCC wants to suggest that the emails reveal Plaintiff's character and hope the jury will draw an impermissible inference on that basis.
216	Emails from undergraduate courses	Relevance and prejudice (401, 403). These emails are from a different program years before the incidents in question. Impermissible character evidence (404). SWOCC wants to suggest that the emails reveal Plaintiff's character and hope the jury will draw an impermissible inference on that basis.
238	Notes from Melissa Sperry	Hearsay (801). The notes are hearsay if offered by Defendants, including any statements allegedly attributed to Plaintiff. If offered against Defendants, any purported statements of Plaintiff must be redacted. Additionally, portions of the notes may be subject to Plaintiff's motion in limine regarding Plaintiff's emotional state, and should be redacted if allowed.
241	Notes from Susan Walker	Hearsay (801). The notes are hearsay if offered by Defendants, including any statements allegedly attributed to Plaintiff. If offered against Defendants, any purported statements of Plaintiff must be redacted. Additionally, portions of the notes may be subject to Plaintiff's motion in limine regarding Plaintiff's emotional state, and should be redacted if allowed.
243	SWOCC's notes about various issues	Hearsay (801). The notes are hearsay if offered by Defendants, including any statements allegedly attributed to Plaintiff. If offered against Defendants, any purported statements of Plaintiff must be redacted.
246	Unidentified notes about meeting	Hearsay (801). The notes are hearsay if offered by Defendants, including any statements allegedly attributed to Plaintiff. If offered against Defendants, any purported statements of Plaintiff must be redacted. Additionally, portions of the notes may be subject to Plaintiff's motion in limine regarding Plaintiff's emotional state, and should be redacted if allowed.

252	Pam Wick's notes	Hearsay (801). The notes are hearsay if offered by Defendants, including any statements allegedly attributed to Plaintiff. If offered against Defendants, any purported statements of Plaintiff must be redacted.
253	Emails between SWOCC administration	Hearsay (801). The emails between Walker and other SWOCC administrators are hearsay and may need to be redacted if the exhibit is admitted, unless offered against Defendants.
254	Emails between SWOCC administration	Hearsay (801). The emails between the SWOCC administrators are hearsay and may need to be redacted if the exhibit is admitted, unless offered against Defendants.
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258	Emails between SWOCC administration	Hearsay (801). The emails between the SWOCC administrators are hearsay and may need to be redacted if the exhibit is admitted, unless offered against Defendants. Additionally, portions of the notes may be subject to Plaintiff's motion in limine regarding Plaintiff's emotional state, and should be redacted if allowed.
260	Emails about other assignments later in semester	This exhibit is subject to the Court's sanctions order (ECF 65 at 23) "prevent[ing] Defendants from introducing evidence that suggests the gradebook's contents." Defendants have introduced this email and other related emails to argue that Plaintiff failed from SWOCC for reasons other than the assignments identified by Plaintiff—i.e., the contents of the gradebook. The only purpose for Defendants to introduce this email would be in violation of the Court's sanctions order.

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265	Emails between SWOCC administration	Hearsay (801). The emails between the SWOCC administrators are hearsay and may need to be redacted if the exhibit is admitted, unless offered against Defendants.
268	Emails between SWOCC administration	Hearsay (801). The emails between the SWOCC administrators are hearsay and may need to be redacted if the exhibit is admitted, unless offered against Defendants.
269	Emails about grading issues and what grades Plaintiff supposedly received in various classes	This exhibit is subject to the Court's sanctions order (ECF 65 at 23) "prevent[ing] Defendants from introducing evidence that suggests the gradebook's contents." Defendants have introduced this email and other related emails to argue that Plaintiff failed from SWOCC for reasons other than the assignments identified by Plaintiff—i.e., the contents of the gradebook. The only purpose for Defendants to introduce this email would be in violation of the Court's sanctions order. It is also hearsay not within any exception (801).
270	Emails about other assignments and grading issues	This exhibit is subject to the Court's sanctions order (ECF 65 at 23) "prevent[ing] Defendants from introducing evidence that suggests the gradebook's contents." Defendants have introduced this email and other related emails to argue that Plaintiff failed from SWOCC for reasons other than the assignments identified by Plaintiff—i.e., the contents of the gradebook. The only purpose for Defendants to introduce this email would be in violation of the Court's sanctions order. It is also hearsay not within any exception (801).

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275	Plaintiffs' interrogatory responses	Certain responses are irrelevant or barred by other rulings of the Court. Depending of what portions Defendants offer, other portions may need to be redacted (401, 403).
278	Text messages	Relevancy and prejudice (401, 403). It is not clear these are about anything related to this case.
279	Text messages	Relevancy and prejudice (401, 403). It is not clear these are about anything related to this case.
281	Emails with Oregon Board of Nursing	Relevancy and prejudice (410, 403). This is an email conversation with the Oregon Board of Nursing. The Oregon Board of Nursing asserted immunity from discovery under Oregon statutes in the course of the litigation. This email references the Oregon Board's investigation, about which Plaintiff was precluded from taking any discovery. Allowing Defendants to introduce evidence referring to the outcome of a third-party's investigation when the results of the investigation are not available would be prejudicial to Plaintiff.

282	Letter from Oregon Board of Nursing.	Hearsay (801). There is no exception under which this document falls. Relevancy and prejudice (410, 403). This is a letter from the Oregon Board of Nursing explaining that it has closed its investigation, but failing to explain the scope of its investigation, the evidence it relied upon, or even anything about its deliberation process. Plaintiff subpoenaed the Oregon Board for its investigative file but was precluded from obtaining under Oregon law. Allowing Defendants to introduce evidence referring to the outcome of a third-party's investigation when the results of the investigation are not available would be prejudicial to Plaintiff.
283	Psychological evaluation	Conditional objections under Rules 401, 403. These may be irrelevant depending on the Court's ruling on other issues.
284	Psychological evaluation	Conditional objections under Rules 401, 403. These may be irrelevant depending on the Court's ruling on other issues.
285	Email to third party	Relevancy and prejudice (401, 403). Plaintiff's email to another person about entirely irrelevant matter is irrelevant and would be confusing and prejudicial for the jury to consider during trial.
286	Email to third party	Portions of the email are irrelevant and highly prejudicial as they describe events and issues that are not relevant to claims and defenses in this case. While portions of the email may be relevant for certain limited reasons, the email will have to be redacted of all inadmissible material before it is shown to the jury or admitted into evidence. (401, 403).
287	Letter from third party	This is a letter from a third-party and is hearsay (801). Conditional objections under Rules 401, 403. These may be irrelevant depending on the Court's ruling on other issues.
289	Multiple emails	The first email on bates page 301 is irrelevant and prejudicial (401, 403). The rest of the emails are relevant and admissible, but the first email should be redacted before shown to the jury or admitted into evidence.
290	Discharge notes	Portions of the discharge notes relating to certain diagnoses and responses from Plaintiff are not relevant and would be highly prejudicial and confusing if revealed to the jury. (401, 403). To the extent that the exhibit is shown to the jury or admitted into evidence, it must be redacted of all irrelevant and prejudicial statements.

291	Email to Oregon DHS	Relevancy and prejudice (401, 403). Plaintiff's email to another person about entirely irrelevant matter is irrelevant and would be confusing and prejudicial for the jury to consider during trial.
292	Email and narrative	While portions of this narrative are relevant, other portions relate to different issues that are irrelevant and prejudicial. (401, 403.)
293	Oregon Administrative Rules	Irrelevant and prejudicial (401, 403). Defendants have not identified any particular rule(s) they intend to introduce, but it is not appropriate for the jury to be introduced to legal concepts through party exhibits. To the extent Defendants believe there are legal principles that the jury needs to be informed about, those must come through the Court's instructions to the jury.

Plaintiff objects to Defendants' witness statement for Eric Morrell, PhD. Defendants never disclosed Dr. Morrell as a potential witness in their Rule 26(a)(1) initial disclosures or any discovery responses. Fed. R. Civ. P. 37(c). Defendants' disclosure of his testimony is also inadequate under Rule 26(a)(2)(C). Plaintiff was unable to prepare for his potential trial examination or take a deposition because of Defendants' failure to disclose his testimony previously, and Plaintiff would be prejudiced from allowing his testimony at this late stage.

DATED: May 3, 2022.

PARSONS BEHLE & LATIMER

/s/ Brandon J. Mark
Brandon J. Mark

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of May, 2022, I caused to be filed a true and correct copy of the foregoing **PLAINTIFFS' OBJECTIONS TO DEFENDANTS' TRIAL EXHIBITS AND WITNESS STATEMENTS** with the Court's ECF system, which sent notice of such filing to counsel for all parties hereto.

/s/ Brandon J. Mark